

House File 328 - Introduced

HOUSE FILE 328
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 79)

A BILL FOR

1 An Act relating to matters under the purview of the division
2 of banking of the department of commerce, and including
3 effective date provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 524.211, subsection 3, Code 2011, is
2 amended to read as follows:

3 3. The superintendent, general counsel, examiners, and
4 other employees of the banking division, who have credit
5 relations with a person or entity licensed or registered
6 pursuant to chapter 535B, 535D, or 536C, are prohibited from
7 participating in decisions, oversight, and official review
8 of matters concerning the regulation of the licensee or
9 registrant.

10 Sec. 2. Section 524.212, subsection 2, Code 2011, is amended
11 to read as follows:

12 2. The superintendent may receive documents, materials,
13 or other information, including otherwise confidential and
14 privileged documents, materials, or other information, from
15 other local, state, federal, and international regulatory
16 agencies, the conference of state bank supervisors and its
17 affiliates or subsidiaries, the American association of
18 mortgage regulators and its affiliates or subsidiaries, and
19 the national association of consumer credit administrators
20 and its affiliates or subsidiaries, and shall maintain as
21 confidential and privileged any such document, material, or
22 other information received with notice or the understanding
23 that it is confidential or privileged under the laws of the
24 jurisdiction that is the source of the document, material, or
25 other information. With respect to documents, materials, or
26 other information that is shared or stored electronically,
27 the superintendent is authorized to take any necessary steps
28 to ensure the division's information technology systems
29 comply with the information technology security requirements
30 established by any of the regulatory agencies or associations
31 of state regulatory agencies described in this section.

32 Sec. 3. Section 524.904, subsection 5, Code 2011, is amended
33 to read as follows:

34 5. a. A state bank may grant loans and extensions of credit
35 to a ~~corporate~~ borrowing group in an amount not to exceed

1 twenty-five percent of the state bank's aggregate capital if
 2 all loans and extensions of credit to any one borrower within
 3 a ~~corporate~~ borrowing group conform to subsection 2 or 3, and
 4 the financial strength, assets, guarantee, or endorsement of
 5 any one ~~corporate~~ borrowing group member is not relied upon
 6 as a basis for loans and extensions of credit to any other
 7 ~~corporate~~ borrowing group member. A state bank may grant loans
 8 and extensions of credit to a ~~corporate~~ borrowing group in an
 9 amount not to exceed thirty-five percent of aggregate capital
 10 if all loans and extensions of credit to any one borrower
 11 within a ~~corporate~~ borrowing group conform to subsection 2,
 12 3, or 4, and the financial strength, assets, guarantee, or
 13 endorsement of any one ~~corporate~~ borrowing group member is not
 14 relied upon as a basis for loans and extensions of credit to
 15 any other ~~corporate~~ borrowing group member. ~~A corporate group~~
 16 ~~includes a person and all corporations in which the person~~
 17 ~~owns or controls fifty percent or more of the shares entitled~~
 18 ~~to vote.~~ While not to be construed as an endorsement of the
 19 quality of any loan or extension of credit, the superintendent
 20 may authorize a state bank to grant loans and extensions of
 21 credit to a borrowing group in an amount not to exceed fifty
 22 percent of aggregate capital if all loans and extensions of
 23 credit to any one borrower within a borrowing group conform
 24 to subsection 2 or 3, and the financial strength, assets,
 25 guarantee, or endorsement of any one borrowing group member is
 26 not relied upon as a basis for loans and extensions of credit
 27 to any other borrowing group member.

28 b. For the purposes of this subsection, a borrowing
 29 group includes a person and any legal entity, including but
 30 not limited to corporations, limited liability companies,
 31 partnerships, trusts, and associations where the following
 32 exist:

33 (1) The interests of a group of more than one borrower,
 34 or any combination of the members of the group, are so
 35 interrelated that they should be considered a unit for the

1 purpose of applying the lending limit limitations of this
2 section. For the purposes of this subparagraph, interrelated
3 borrowers include but are not limited to borrowers having
4 separate operations that cannot exist without the other,
5 borrowers sharing collateral, borrowers commingling assets,
6 borrowers sharing operational proceeds, or borrowers for whom
7 there is a common source of repayment for the borrowers' loans.

8 (2) One or more persons owns or controls fifty percent or
9 more of the voting securities or membership interests of the
10 borrowing entity or a member of the group.

11 (3) One or more persons controls, in any manner, the
12 election of a majority of the directors, managers, trustees,
13 or other persons exercising similar functions of the borrowing
14 entity or a member of the group.

15 (4) One or more persons has the power to vote fifty percent
16 or more of any class of voting securities or membership
17 interests of the borrowing entity or a member of the group.

18 c. To demonstrate compliance with this subsection, a
19 bank shall maintain in its files, at a minimum, all of the
20 following:

21 (1) Documentation demonstrating the current ownership of
22 the borrowing entity.

23 (2) Documentation identifying the persons who have voting
24 rights in the borrowing entity.

25 (3) Documentation identifying the board of directors and
26 senior management of the borrowing entity.

27 (4) The bank's assessment of the borrowing entity's means
28 of servicing the loan or extension of credit, including
29 specific reasons in support of that assessment. The assessment
30 shall include an analysis of the borrowing entity's financial
31 history, its present and projected economic and financial
32 performance, and the significance of any financial support
33 provided to the borrowing entity by members of the borrowing
34 group and third parties.

35 Sec. 4. Section 524.904, subsection 7, Code 2011, is amended

1 by adding the following new paragraph:

2 NEW PARAGRAPH. *m.* A renewal or restructuring of a loan as
3 a new loan or extension of credit following the exercise by
4 a state bank of reasonable efforts, consistent with safe and
5 sound banking practices, to bring the loan into conformance
6 with the lending limit, unless new funds are advanced by the
7 bank to the borrower or unless a new borrower replaces the
8 original borrower or unless the superintendent determines that
9 the renewal or restructuring was undertaken as a means to evade
10 the bank's lending limit.

11 Sec. 5. Section 524.1201, subsection 4, Code 2011, is
12 amended by striking the subsection.

13 Sec. 6. Section 535B.4, Code 2011, is amended by adding the
14 following new subsection:

15 NEW SUBSECTION. 8A. A licensee may not establish branch
16 locations outside of the United States.

17 Sec. 7. Section 535B.6, Code 2011, is amended to read as
18 follows:

19 **535B.6 Licensing of ~~foreign corporation~~ certain corporations.**

20 1. An applicant that is a ~~foreign corporation~~ incorporated
21 under the laws of another state in the United States must be
22 authorized to do business in this state. ~~A foreign corporation~~
23 Such a corporation shall file with the license application both
24 of the following:

25 ~~1-~~ a. An irrevocable consent, duly acknowledged, that
26 suits and actions may be commenced against that licensee in the
27 courts of this state by service of process in the usual manner
28 provided for by the statutes and court rules of this state.

29 ~~2-~~ b. Proof of authorization to do business in this state.

30 2. Businesses that are incorporated outside of the United
31 States are not eligible for a license.

32 Sec. 8. Section 535D.4, subsection 1, Code 2011, is amended
33 to read as follows:

34 1. On or after January 1, 2010, an individual shall not
35 engage in the business of a mortgage loan originator with

1 respect to any dwelling or residential real estate located in
2 this state without first obtaining and maintaining annually
3 a license under this chapter. Each licensed mortgage loan
4 originator must register with and maintain a valid unique
5 identifier issued by the nationwide mortgage licensing system
6 and registry.

7 Sec. 9. NEW SECTION. 535D.23 Reports of condition required
8 — exceptions.

9 Each mortgage loan originator licensee shall submit
10 reports of condition to the nationwide mortgage licensing
11 system and registry unless the mortgage loan originator's
12 activity is included in a report submitted by the mortgage
13 loan originator's employer in accordance with section 535B.11,
14 subsection 3, section 535B.18, or section 536A.14, subsection
15 2. The reports shall be in such form and shall contain such
16 information as the nationwide mortgage licensing system and
17 registry may require.

18 Sec. 10. EFFECTIVE UPON ENACTMENT. The section of this Act
19 amending section 524.904 takes effect upon enactment.

20 EXPLANATION

21 This bill makes several changes in connection with banking
22 and mortgage regulation by the division of banking of the
23 department of commerce.

24 The bill provides that the superintendent of banking
25 is authorized to ensure that the division's information
26 technology systems comply with information technology
27 security requirements established by any regulatory agency or
28 association of regulatory agencies specified in Code section
29 524.212.

30 The bill makes changes regarding provisions relating to
31 a state bank granting loans and extensions of credit to a
32 corporate group. The bill provides that, while not to be
33 construed as an endorsement of the quality of any loan or
34 extension of credit, the superintendent may authorize a state
35 bank to grant loans and extensions of credit to a corporate

1 group in an amount not to exceed 50 percent of aggregate
2 capital if all loans and extensions of credit to any one
3 borrower within a corporate group conform to an applicable
4 percentage of capital limitations and the financial strength,
5 assets, guarantee, or endorsement of any one corporate group
6 member is not relied upon as a basis for loans and extensions
7 of credit to any other corporate group member.

8 The bill modifies the definition of a corporate group for
9 purposes of applying group bank lending limits and replaces
10 references to "corporate" group with "borrowing" group. The
11 bill states that a borrowing group includes a person and any
12 legal entity, including but not limited to corporations,
13 limited liability companies, partnerships, trusts, and
14 associations. The bill specifies that a borrowing group shall
15 include the interests of a group of more than one borrower,
16 or any combination of the members of the group, which are
17 so interrelated, as defined in the bill, that they should be
18 considered a unit for the purpose of applying the lending
19 limits; one or more persons owning or controlling 50 percent
20 or more of the voting securities or membership interests
21 of the borrowing entity or a member of the group; one or
22 more persons controlling, in any manner, the election of a
23 majority of the directors, managers, trustees, or other persons
24 exercising similar functions of the borrowing entity or a
25 member of the group; or one or more persons having the power
26 to vote 50 percent or more of any class of voting securities
27 or membership interests of the borrowing entity or a member
28 of the group. The bill states that required documentation to
29 demonstrate compliance with borrowing group bank lending limits
30 includes, at a minimum, demonstrating the current ownership
31 of the borrowing entity, identifying the persons who have
32 voting rights in the borrowing entity, identifying the board
33 of directors and senior management of the borrowing entity,
34 and the bank's assessment of the borrowing entity's means of
35 servicing the loan or extension of credit including specific

1 reasons in support of that assessment.

2 The bill deletes a provision which states that a bank shall
3 not operate a loan production office or deposit production
4 office in Iowa unless either the bank has received approval
5 from the superintendent or the bank operated the loan
6 production office or deposit production office prior to July
7 1, 2006.

8 The bill includes in the list of exemptions from a bank's
9 lending limit a renewal or restructuring of a loan as a new
10 loan or extension of credit if efforts had been made to bring
11 the loan into conformance with the lending limit, unless as
12 part of the renewal or restructuring new funds are advanced
13 by the bank to the borrower or a new borrower replaces the
14 original borrower or the superintendent determines that a
15 renewal or restructuring was undertaken as a means to evade the
16 bank's lending limit. This provision of the bill takes effect
17 upon enactment.

18 The bill provides that a mortgage banker or mortgage broker
19 licensed under Code chapter 535B may not establish branch
20 locations outside of the United States, specifies that an
21 applicant incorporated under the laws of another state in the
22 United States must be authorized to do business in Iowa, and
23 specifies that businesses that are incorporated outside of the
24 United States are not eligible for licensure.

25 The bill adds persons or entities licensed under Code
26 chapter 535D, the mortgage licensing act, to provisions
27 prohibiting the superintendent, general counsel, examiners,
28 and other employees of the banking division, if engaged in
29 credit relations with the person or entity, from participating
30 in specified regulatory actions over the person or entity.
31 The bill provides that an individual shall not engage in
32 the business of a mortgage loan originator with respect
33 to any dwelling or residential real estate located in this
34 state without obtaining and maintaining a license under Code
35 chapter 535D. This provision had previously been restricted

1 to "residential real estate". The bill establishes a new
2 requirement that each mortgage loan originator licensee under
3 the Code chapter shall submit to the nationwide mortgage
4 licensing system and registry reports of condition required by
5 the system and registry, unless the mortgage loan originator's
6 activity is included in a mortgage call report submitted by
7 the originator's employer in accordance with specified Code
8 sections.